

AMENDED IN ASSEMBLY JUNE 15, 2006

AMENDED IN SENATE APRIL 24, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 13, 2006

## SENATE BILL

**No. 1272**

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**Introduced by Senator Bowen  
(Principal coauthor: Senator Alquist)**

February 9, 2006

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An act to add Section 4800.5 to the Probate Code, relating to advance health care directives.

### LEGISLATIVE COUNSEL'S DIGEST

SB 1272, as amended, Bowen. Advance health care directives.

Existing law establishes the Advance Health Care Directive Registry allowing individuals to register a written advance health care directive with the Secretary of State. The information in the registry is accessible by specified entities, upon request.

~~This bill would declare the Legislature's intent to explore legislation that would transition registration in, and access to, the Advance Health Care Directive Registry from a paper-based system to an electronic, Web-based system, using the existing resources of the Secretary of State's office~~ *require the Secretary of State to establish an electronic recording delivery system, as defined, to provide access to advance health care directive records to health care providers and the individuals to whom the records pertain or an authorized person, as specified. The bill would require the system to be periodically audited by a computer security auditor, and would require any person with secure access to the system to be fingerprinted and to undergo a*

*criminal background check, to be conducted in conjunction with the Department of Justice. The bill would require the Secretary of State to report to the Legislature with regard to the system by June 30, 2011.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 4800.5 is added to the Probate Code, to*  
2     *read:*

3     *4800.5. (a) For the purposes of this section, the following*  
4     *definitions shall apply:*

5     *(1) "Computer security auditor" means computer security*  
6     *personnel hired to perform an independent audit of the electronic*  
7     *recording delivery system. The computer security auditor shall*  
8     *be independent of the Secretary of State's office and shall not be*  
9     *the same contractor hired to establish electronic registration in,*  
10    *or access to, the state Advance Health Care Directive Registry.*

11    *(2) "Digital electronic record" means a record containing*  
12    *information that is created, generated, sent, communicated,*  
13    *received, or stored by electronic means, but not created in*  
14    *original paper form.*

15    *(3) "Digitized electronic record" means a scanned image of*  
16    *the original paper document.*

17    *(4) "Electronic recording delivery system" means a system*  
18    *that delivers digitized or digital electronic advance health care*  
19    *directive records for registration in the Advance Health Care*  
20    *Directive Registry, and that returns those records to the party*  
21    *requesting registration.*

22    *(5) "Security testing" means an independent security audit by*  
23    *a computer security auditor, including, but not limited to,*  
24    *attempts to penetrate an electronic recording delivery system for*  
25    *the purpose of testing the security of that system.*

26    *(6) "Source code" means a program or set of programs,*  
27    *readable and maintainable by any person, that is translated or*  
28    *interpreted into a form that the electronic recording delivery*  
29    *system can execute.*

30    *(b) The Secretary of State shall establish an electronic*  
31    *recording delivery system for registration in the Advance Health*  
32    *Care Directive Registry.*

1     (c) *The Secretary of State shall establish a system, pursuant to*  
2 *this section, for providing health care providers, who attest that*  
3 *they need access for health care purposes, electronic access to*  
4 *“read-only” copies of digitized or digital electronic advance*  
5 *health care directive records in the Advance Health Care*  
6 *Directive Registry upon request. The system shall also provide*  
7 *access to the individual to whom the digitized or digital*  
8 *electronic advance health care directive records pertain or to*  
9 *any person authorized to make decisions for that individual. The*  
10 *system shall have an auditable log of that access.*

11     (d) *The Secretary of State may terminate or suspend access to*  
12 *the registry for any good faith reason, including, but not limited*  
13 *to, a determination by the Secretary of State that termination or*  
14 *suspension is necessary to protect the public interest, to protect*  
15 *the integrity of public records, or to protect individuals from*  
16 *harm. The Secretary of State may also terminate or suspend*  
17 *access to a system if a party commits a substantive breach of the*  
18 *requirements of this section, or the regulations adopted pursuant*  
19 *to this part.*

20     (e) *Advance health care directives that meet all other*  
21 *requirements pursuant to this division, which have been*  
22 *electronically signed, shall be valid if the requirements in Section*  
23 *16.5 of the Government Code and Chapter 10 (commencing with*  
24 *Section 22000) of Division 7 of Title 2 of the California Code of*  
25 *Regulations are met.*

26     (f) *If a signature is required to be accompanied by a notary’s*  
27 *seal or stamp, that requirement is satisfied, if, in addition to*  
28 *meeting the requirements of Section 16.5 of the Government*  
29 *Code and Chapter 10 (commencing with Section 22000) of*  
30 *Division 7 of Title 2 of the California Code of Regulations, the*  
31 *electronic signature of the notary contains all of the following:*

32     (1) *The name of the notary.*

33     (2) *The words “Notary Public.”*

34     (3) *The name of the county where the bond and oath of office*  
35 *of the notary are filed.*

36     (4) *The sequential identification number assigned to the*  
37 *notary, if any.*

38     (5) *The sequential identification number assigned to the*  
39 *manufacturer or vendor of the notary’s physical or electronic*  
40 *seal, if any.*

1 (g) Before the electronic recording delivery system may  
2 become operational, the Secretary of State shall conduct a  
3 computer security audit to confirm that the system is secure and  
4 that the proposed operating procedures are sufficient to assure  
5 the continuing security and lawful operation of that system. The  
6 Secretary of State shall establish regular computer security  
7 audits after the system goes into operation.

8 (h) The Secretary of State shall approve software and other  
9 services for the electronic recording delivery system pursuant to  
10 regulations adopted as described in this section.

11 (i) The Secretary of State shall, in consultation with interested  
12 parties, adopt regulations for the review, approval, and oversight  
13 of the electronic recording delivery system. Regulations shall be  
14 adopted pursuant to the Administrative Procedure Act (Chapter  
15 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
16 Title 2 of the Government Code). The regulations shall comply  
17 with Section 12168.7 of the Government Code.

18 (j) The regulations adopted pursuant to this section may  
19 include, but need not be limited to, any of the following:

20 (1) Establishment of baseline technological and procedural  
21 specifications for electronic recording delivery systems.

22 (2) Requirements for security, capacity, reliability, and  
23 uniformity.

24 (3) Requirements as to the nature and frequency of computer  
25 security audits.

26 (4) A statement of a detailed and uniform definition of the term  
27 “source code” consistent with this section.

28 (5) Requirements to ensure that substantive modifications to  
29 the operating system, compilers, related software, or source code  
30 are approved by the Secretary of State.

31 (6) Requirements for fingerprinting and criminal records  
32 checks required by this section, including a list of employment  
33 positions or classifications subject to criminal records checks  
34 under this section.

35 (7) Requirements for uniform index information that shall be  
36 included in every digitized or digital electronic record.

37 (8) Requirements for protecting proprietary information,  
38 accessed in an audit conducted pursuant to this section, from  
39 public disclosure.

1     (k) The Secretary of State may promulgate any other  
2     regulations necessary to fulfill his or her obligations under this  
3     part.

4     (l) The Secretary of State shall approve computer security  
5     auditors on the basis of significant experience in the evaluation  
6     and analysis of Internet security design, the conduct of security  
7     testing procedures, and specific experience performing Internet  
8     penetration studies.

9     (m) The electronic recording delivery system shall be audited,  
10    at least once during the first year of operation and periodically  
11    thereafter, as set forth in regulation by a computer security  
12    auditor. The computer security auditor shall conduct security  
13    testing of the electronic recording delivery system. The reports of  
14    the computer security auditor shall include, but not be limited to,  
15    all of the following considerations:

16    (1) Safety and security of the system, including the  
17    vulnerability of the electronic recording delivery system to fraud  
18    or penetration.

19    (2) Results of testing of the system's protections against fraud  
20    or intrusion, including security testing and penetration studies.

21    (3) Recommendations for any additional precautions needed  
22    to ensure that the system is secure.

23    (n) A computer security auditor shall have access to any  
24    aspect of an electronic recording delivery system, in any form  
25    requested. Computer security auditor access shall include, but  
26    not be limited to, permission for a thorough examination of  
27    source code and the associated approved escrow facility, and  
28    necessary authorization and assistance for a penetration study of  
29    that system.

30    (o) If a computer security auditor reasonably believes that an  
31    electronic recording delivery system is vulnerable to fraud or  
32    intrusion, the Secretary of State shall be immediately notified.  
33    The Secretary of State shall immediately take the necessary steps  
34    to guard against any compromise of the electronic recording  
35    delivery system.

36    (p) No person shall be a computer security auditor or be  
37    granted secure access to the electronic recording delivery system  
38    if he or she has been convicted of a felony, has been convicted of  
39    a misdemeanor related to theft, fraud, or a crime of moral  
40    turpitude, or if he or she has pending criminal charges for any of

1 *these crimes. A plea of guilty or no contest, a verdict resulting in*  
2 *conviction, or the forfeiture of bail, shall be a conviction within*  
3 *the meaning of this section, irrespective of a subsequent order*  
4 *under Section 1203.4 of the Penal Code.*

5 *(q) All persons entrusted with secure access to the electronic*  
6 *recording delivery system shall submit fingerprints to the*  
7 *Secretary of State for a criminal records check according to*  
8 *regulations adopted pursuant to this section.*

9 *(r) (1) The Secretary of State shall submit to the Department*  
10 *of Justice the fingerprint images and related information of*  
11 *persons with secure access to the electronic recording delivery*  
12 *system and computer security auditors for the purpose of*  
13 *obtaining information as to the existence and nature of a record*  
14 *of state or federal convictions and arrests for which the*  
15 *Department of Justice establishes that the applicant was released*  
16 *on bail or on his or her own recognizance pending trial.*

17 *(2) The Department of Justice shall respond to the Secretary*  
18 *of State for criminal offender record information requests*  
19 *submitted pursuant to this section, with information as delineated*  
20 *in subdivision (l) of Section 11105 of the Penal Code.*

21 *(3) The Department of Justice shall forward requests from the*  
22 *Secretary of State to the Federal Bureau of Investigation for*  
23 *federal summary criminal history information pursuant to this*  
24 *section.*

25 *(4) The Secretary of State shall review and compile the*  
26 *information from the Department of Justice and the Federal*  
27 *Bureau of Investigation to determine whether a person is eligible*  
28 *to access the electronic recording delivery system pursuant to*  
29 *this part.*

30 *(5) The Secretary of State shall request subsequent arrest*  
31 *notification service, pursuant to Section 11105.2 of the Penal*  
32 *Code, for all persons with secure access to the electronic*  
33 *recording delivery system and all computer security auditors.*

34 *(s) The Secretary of State shall deliver written notification of*  
35 *an individual's ineligibility for access to the electronic recording*  
36 *delivery system to the individual, his or her known employer, and*  
37 *the computer security auditor.*

38 *(t) The Department of Justice shall charge a fee sufficient to*  
39 *cover the cost of processing a state or federal criminal offender*

1 *record information request and any other costs incurred*  
2 *pursuant to this section.*

3 *(u) The Secretary of State shall define “secure access” by*  
4 *regulation.*

5 *(v) The Secretary of State shall monitor the security of the*  
6 *electronic recording delivery system. If an emergency involving*  
7 *multiple fraudulent transactions occurs, the Secretary of State*  
8 *may order the suspension of the electronic recording delivery*  
9 *system, if necessary to protect the security of the system.*

10 *(w) (1) The Attorney General, a district attorney, or a city*  
11 *prosecutor may bring an action in the name of the people of the*  
12 *state seeking declaratory or injunctive relief, restitution for*  
13 *damages or economic loss, rescission, or other equitable relief*  
14 *pertaining to any alleged violation of this part or any regulation*  
15 *adopted pursuant to this part. Injunctive relief may include, but*  
16 *is not limited to, an order suspending a party from participation*  
17 *in the electronic recording delivery system, on a temporary or*  
18 *permanent basis.*

19 *(2) Nothing in this subdivision shall be construed to prevent*  
20 *the Attorney General, a district attorney, or a city prosecutor*  
21 *from seeking legal or equitable relief under any other provision*  
22 *of law.*

23 *(x) The Secretary of State shall conduct an evaluation of the*  
24 *electronic recording delivery system authorized by this part, and*  
25 *report to the Legislature on or before June 30, 2011.*

26 *(y) The evaluation required under subdivision (x) shall include*  
27 *a study of the feasibility of expanding the provisions of this part*  
28 *to cover the delivery, recording, and return of other electronic*  
29 *records.*

30 *(z) The authority granted in this part is in addition to any*  
31 *other authority or obligation under state or federal law.*

32 *(aa) The Secretary of State shall use existing resources of the*  
33 *Office of Secretary of State to implement this section.*

34 ~~SECTION 1. It is the intent of the Legislature to explore~~  
35 ~~legislation that would transition registration in, and access to, the~~  
36 ~~Advance Health Care Directive Registry from a paper-based~~  
37 ~~system to an electronic, Web-based system, using the existing~~  
38 ~~resources of the office of the Secretary of the State.~~

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